



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

February 28 1996

Ms. Kay Ellen Pollack  
Assistant City Attorney  
Criminal Law and Police Division  
City of Dallas  
Office of the City Attorney  
City Hall  
Dallas, Texas 75201

OR96-0267

Dear Ms. Pollack:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 35700.

The City of Dallas (the "city") received an open records request from an attorney for all records pertaining to a complaint the attorney's client filed with the Dallas Police Department Internal Affairs Division. You state that the city has released to the requestor "a large portion" of the internal affairs investigation. You seek to withhold certain other records pursuant to sections 552.101, 552.103, and 552.108 of the Government Code.

You first seek to withhold an audio tape recording and its transcript from the requestor pursuant to the "litigation exception," section 552.103 of the Government Code. You contend that section 552.103(a) excepts this material from required disclosure because "there may be potential litigation of settlement negotiations" in connection with injuries the requestor's client received during an encounter with a police officer.

To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. Open Records Decision No. 588 (1991) at 1. The mere chance of litigation will not trigger section 552.103(a). Open Records Decision No. 452 (1986) at 4 and authorities cited therein. To demonstrate that litigation is reasonably anticipated, the governmental body must furnish concrete evidence that litigation involving a specific matter is realistically contemplated and is more than

mere conjecture. *Id.* You have not shown that the requested material meets these tests; consequently the city may not withhold the tape recording or transcript.

You next contend that the supplemental police reports pertaining to the incident may be withheld from the public pursuant to the "law-enforcement exception," section 552.108 of the Government Code. Traditionally, when applying section 552.108, our office has distinguished between cases that are still under active investigation and those that are closed. Open Records Decision No. 611 (1992) at 2. In cases that are still under active investigation, this section excepts from required public disclosure all information except that generally found on the first page of the offense report. *See generally* Open Records Decision No. 127 (1976) (citing *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976)). In your brief to this office you stated that the police reports pertain to a pending criminal case. Assuming that such is still the case, we conclude that the city may withhold the police records at this time pursuant to section 552.108. On the other hand, because you have raised no other exceptions to required public disclosure with regard to these records, if the criminal proceedings in this case have concluded, these records must now be released in their entirety.

You also seek to withhold pursuant to section 552.108 information revealing a certain "defensive tactic" employed by Dallas police officers. Section 552.108 excepts information from disclosure when its release would unduly interfere with law enforcement. Open Records Decision No. 616 (1993) at 1. This office determines whether the release of particular records will unduly interfere with law enforcement on a case-by-case basis. Open Records Decision No. 408 (1984) at 2. You contend that section 552.108 excepts this information because

[t]he defensive tactics reveal investigative and enforcement strategies of officers and if the information was disclosed to the public, such disclosure would hinder effective law enforcement. Criminals could conceivably avoid detection through an understanding of these techniques used by the divisions of the Dallas Police Department for investigation and detection of crimes.

After reviewing the information at issue, we cannot agree that the information submitted to this office is so detailed that its release would unduly interfere with law-enforcement efforts. Although these materials generally explain the principles behind the use of a "transport wrist lock," we do not believe that these records provide sufficient information that would allow a suspect to circumvent its use. We therefore conclude that the city may not withhold these records under section 552.108.

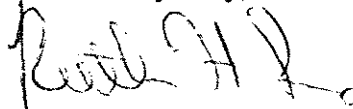
Finally, you contend that the city must withhold certain medical records from the requestor pursuant to section 552.101 of the Government Code, which protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." The Texas Medical Practice Act provides in pertinent part:

Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

V.T.C.S. art. 4495b, § 5.08(b). We agree that the hospital records submitted to this office constitute confidential medical records for purposes of section 5.08(b). Further, none of the exceptions to nondisclosure listed in subsections (g) or (h) of section 5.08 appear to apply in this instance, nor have the procedural requirements for the authorization of the release of the medical records appear to have been met. *See* V.T.C.S. art. 4495b, § 5.08(j). Absent such proper written authorization, we conclude that the city must withhold the hospital records at this time. For similar reasons, we also conclude that the city must withhold at this time all of the requested EMS records until the city receives proper authorization for the release of those records. *See* Health & Safety Code §§ 773.091-.093. *See generally* Open Records Decision No. 632 (1995).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy  
Assistant Attorney General  
Open Records Division

RHS/RWP/ch

Ref.: ID# 35700

Enclosures: Submitted documents

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